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SERVICE DATE – JULY 13, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34527

MAUMEE & WESTERN RAILROAD COMPANY AND RMW VENTURES LLC —  
PETITION FOR DECLARATORY ORDER — CSX TRANSPORTATION, INC.  
CROSSING RIGHTS AT DEFIANCE, OH

Decided: July 12, 2005

On July 16, 2004, Maumee & Western Railroad Company (M&W) and RMW Ventures LLC (RMW) (collectively, petitioners) filed and served on CSX Transportation, Inc. (CSXT), a petition for a declaratory order. Petitioners request that a proceeding be instituted to determine whether the construction and operation of CSXT's double track main line where it crossed M&W's main line in Defiance, OH, the subsequent removal of the double diamond crossing at this location by CSXT without the consent of M&W, and the severing of M&W's main line track unreasonably interfere with the common carrier rail service operations of M&W in violation of 49 U.S.C. 10901(d) and M&W's statutory rights and obligations to provide common carrier rail service under its certificate of public convenience and necessity issued by the Board pursuant to 49 U.S.C. 10901(a). Petitioners request that the Board order CSXT to immediately replace and restore the double diamond crossing, reconnect the main line track of M&W thereto, maintain the crossing, enter into a crossing and interlocking agreement with M&W, and provide reasonable compensation to M&W for the crossing rights. Petitioners also ask the Board to condition CSXT's crossing authority on its compliance with such an order and to authorize M&W to remove CSXT track and rail facilities from M&W's right of way in the event of noncompliance.

By letter filed on August 6, 2004, petitioners and CSXT stated that they were entering mediation with the Board's Office of Compliance and Enforcement to resolve the crossing dispute. By letter filed on March 14, 2005, petitioners indicated that the mediation was unsuccessful and requested that the Board institute a declaratory order proceeding.

The Board has discretionary authority under 5 U.S.C. 554(e) to issue a declaratory order to terminate a controversy or remove uncertainty. In this case, there is a controversy on the present record regarding whether a violation of 49 U.S.C. 10901 has occurred, and the record contains insufficient information to determine whether CSXT's crossing operations have unreasonably interfered with M&W's common carrier rights and obligations. Therefore, under the Board's authority at 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding will be instituted.

The Board will resolve this matter pursuant to the modified procedure rules at 49 CFR 1112.1 et seq. Petitioners have essentially filed their opening statement with their petition. Under these circumstances, a 20-day time period from the date of service of this decision appears to be an adequate amount of time for CSXT to prepare and file a reply. Petitioners' rebuttal will be due 10 days after the reply due date, or 30 days from the service date of this decision. This should provide petitioners with sufficient time to prepare and file a rebuttal.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice, including 49 CFR 1112 and 1114.
2. Replies are due by August 2, 2005.
3. Petitioners' rebuttal statement is due by August 12, 2005.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary